

REMARKS

The Office Action dated May 5, 2011 ("Office Action") has been thoroughly reviewed and Applicants submit that all issues raised therein have been addressed in this response. Claims 1-39 are pending in the subject Application, with claims 1, 18, 19, 25, 28, 32 and 36-39 being independent. No new matter has been added.

The Examiner has maintained his rejection of claims 1, 3, 4, 6-11 and 18-35 under 35 U.S.C. § 103(a) based on U.S. Pat. Appl. Publ. No. 2002/0178072 to Gusler *et al.* ("**Gusler**") and further in view of U.S. Pat. Appl. Publ. No. 2003/0018747 to Herland *et al.* ("**Herland**"). The Examiner has further indicated that newly-added independent claims 36-39 are also rejected under 35 U.S.C. § 103(a) as unpatentable over **Gusler** in view of **Herland**. Applicants respectfully disagree with these rejections for at least the reasons provided below.

I. Interview Request

As an initial matter, Applicants believe that a telephonic interview between Applicants' representative and the Examiner to discuss the outstanding rejection and Applicants' comments provided herein would likely advance the prosecution of the present application. To this end, an Applicant Initiated Interview Request Form is being filed concurrently with this Response and Applicants' respectfully request that the Examiner contact Applicants' representatives to schedule a date and time for such interview.

In anticipation of the interview and in response to the outstanding Action, Applicants provide the following remarks.

II. The Examiner's "Response to Arguments"

In the "Response to Arguments" section of the Office Action, the Examiner asserts that **Gusler** discloses "calculating a virtual distance between a web page that a user is accessing through a first terminal and web pages accessed by other users through one or more second terminals," as recited in Applicants' claims 1, 18, 25, 28 and 32:

A – The Examiner disagrees: Gusler discloses that users access the online stores through a collection of web sites [Gusler, paragraph 10], hence, users are accessing web pages, as web sites are made up of web pages. Gusler also discloses multiple users online [Gusler, paragraph 37]. Gusler further discloses that users who are in close proximity to each other on the web sites [Gusler, paragraphs 47, 49, 52 and 62, showing that users are virtually close based on the web pages that the users may be on at that moment, (i.e., if a user is at the same store, (say a sporting goods store or a music store), they may not be looking at the same items, but are virtually close on the same web site that consists of web pages for that store)].

Applicants' respectfully submit that, contrary to well-settled Patent Office practice, the Examiner's interpretation of *Gusler* is overbroad and unsupported by what the reference actually teaches or suggests. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010) (finding that the PTO's practice of giving a claim the broadest, reasonable construction "does not give the PTO an unfettered license to interpret claims to embrace anything remotely related to the claimed invention. Rather, claims should always be read in light of the specification and teachings in the underlying patent").

In *Gusler*, users are *not* "virtually close based on the web page that the users may be on at that moment," as the Examiner contends. None of paragraphs [0047], [0049], [0052] or [0062] support this notion. That the Examiner asserts otherwise demonstrates a fundamental misunderstanding of *Gusler*. The proximity of one user to one another user according to *Gusler* is determined based solely on the physical location of that user within the online mall map. Whether a user is viewing a web site or a web page has nothing to do with this determination. In fact, *Gusler* largely has nothing to do with store web sites or store web pages.

The "Background" section provides context to the *Gusler* invention disclosure. *Gusler* explains that online shopping malls are typically little more than a group of hyperlinked web sites or portions of web sites, accessible through a common access point or "home" page. (*Gusler* ¶¶ [0009], [0010]) *Gusler* further explains that:

online marketplaces are frequently set up in one of two fundamental ways. Firstly, consider that stores and malls may be presented in their entirety as a single domain, with possible divisions between departments (e.g., men's wear, households, etc), as shown in FIG. 2. A mall home page (21) may contain a group of hyperlinks to various store home pages (23, 24, and 25), which in turn provide hyperlinks to department pages (26, 27, 28, 29, 200, and 201). *The tree structure of these sites are well known and are not unlike the tree structures of other, non-retail web sites.* (Gusler ¶ [0014]) (emphasis added)

Secondly, online malls are often organized so that visiting one "mall-front" shows lists of stores of possible interest to the visitor, and often provide search facilities (36) based on store names or product categories Some online malls . . . provide a map-like view (37) of the virtual "layout" of the mall. This usually does not correspond to a real mall design, but is presented to enhance the browser's shopping experience. . . . *Thus, the "look and feel" of visiting these types of online malls is not much different than that of visiting other types of web sites, and certainly does not parallel the full sensory experience of visiting a real, bricks-and-mortar mall.* (Gusler ¶ [0015]) (emphasis added)

To this end, *Gusler* states that while web-based purchasing via cybermalls has become culturally acceptable, it is very difficult to generate the attributes (e.g., lighting, displays, background music, store facades) that go with a "brick-and-mortar" shopping experience. (Gusler ¶¶ [0013]) According to *Gusler*, many of these carefully selected factors in real stores are lost in the online shopping experience.

Gusler proposes overcoming this issue by implementing a system that (i) "allows an online shopper of an online shopping mall to automatically find other concurrently online shoppers of the same online shopping mall"; (ii) "provide[s] a visual presentation regarding the virtual location of one or more other shoppers within the online shopping mall (e.g. which store or mall space they are currently browsing)"; and (iii) "provide[s] chat room-like (near real time) communications between two or more shoppers, either in text form or multimedia (video and/or sound) form." (Gusler ¶ [0028])

Accordingly, the backbone of the *Gusler* system consists of providing users with an interactive mall map as shown below in Figure 4:

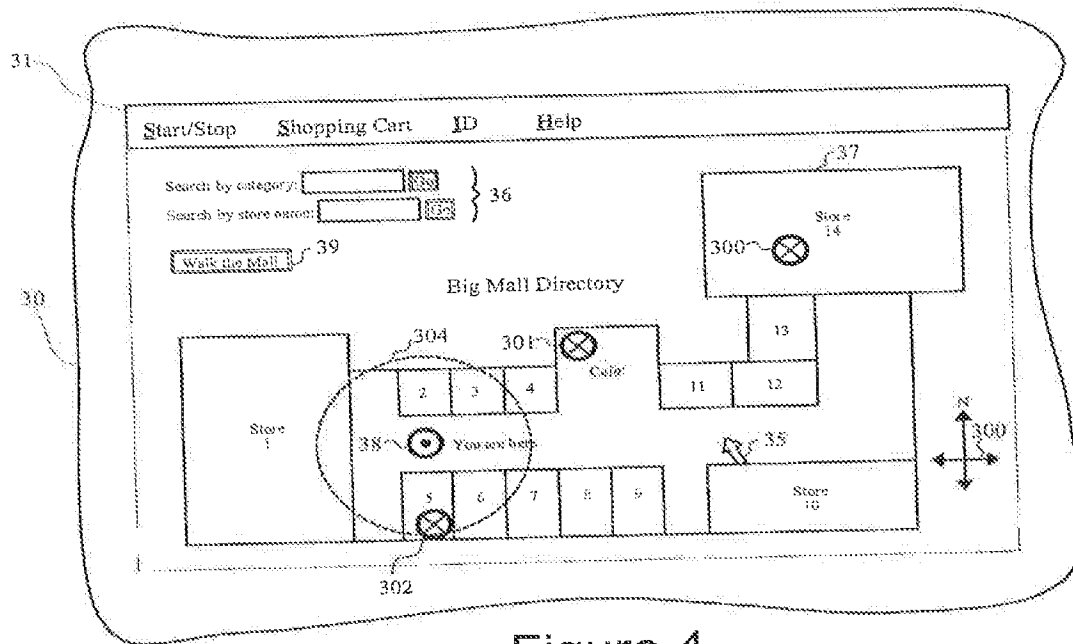


Figure 4

As explained in paragraphs [0049] and [0051], *Gusler* at its most basic level allows users to view the mall map and visually identify the location of other users. In a first embodiment, a user may opt to experience the shopping mall as a “multimedia experience,” akin to a virtual reality experience, and walk through the mall using the mouse to drag a position indicator throughout the mall. (*Gusler* ¶ [0054]) In such embodiments, a user may choose to “jump” to the location or view of another concurrently online shopper by double clicking on the indicator for that other online shopper. (*Gusler* ¶ [0057]) As a result, the user will be presented with the same visual image (i.e., the inside of a store) and/or sounds as the other online shopper. In a second embodiment, a user may use the “jump” function outside of the “multimedia experience” and simply move herself to another location on the map shown in Figure 4 and view the same images or web pages that other shoppers in that location are viewing. (*Gusler* ¶ [0059])

Either way, both *Gusler* embodiments are in the specific context of the mall map in Fig. 4 and proximity determinations are made by the users, not the *Gusler* software, based purely on the map. In fact, paragraph [0058] says with respect to the first embodiment that “a shopper . . . *may notice* that notice that a buddy is currently shopping at an online music store.” (emphasis added) Paragraph [0059] states that a user may “jump” and view the same web page as another user. But neither embodiment identifies other users “by calculating a virtual distance between a

web page that a user is accessing through a first terminal and web pages accessed by other users through one or more second terminals,” as recited in Applicants’ claims. This indeed makes sense as the primary objective of *Gusler* is indeed to get away from traditional tree-structured web site and web page navigation, namely tabbing BACKWARD and FORWARD, and instead bring the “brick-and-mortar” experience to life on the user’s screen.

Gusler does not disclose determining the location of a user based on a web page, nor does *Gusler* disclose determining distances between web pages. Taken line-by-line, none of the Examiner’s cited paragraphs support the Examiner’s contention to the contrary. Paragraph [0047] addresses how a shopper moves through the virtual reality online shopping mall. Paragraph [0049] describes the *Gusler* mall map. Paragraph [0052] talks about online buddies. Paragraph [0062] describes a proximity detector that detects other users based on their *virtual position within the online mall*, not what web site or web page they are on. *Gusler* says nothing about web sites in the Detailed Description. In fact, a user may not even be viewing a website when using the *Gusler* system, as *Gusler’s* primary embodiment relating to the virtual reality online shopping experience does not involve viewing web sites or web pages.

III. Claims 36-39

Applicants added independent claims 36-39 in its last Response. By way of example, claim 36 recites in relevant part:

“the virtual distance is calculated by making a comparison between web page parameters selected from the group consisting of the URI address of the web page accessed by the user to the URI address of one or more of the web pages accessed by other users and words or phrases contained in the web page accessed by the user to words or phrases contained in one or more of the web pages accessed by other users”; and

“displaying for the user on a display a listing of the other users that are accessing a web page that contains words or phrases that are cognitively similar to the words or phrases contained in the web page that the user is accessing.”

The Examiner alleges that paragraph [0062] alone in *Gusler* somehow discloses every single element in both of these clauses. However, paragraph [0062] discloses nothing more than a

“proximity detector” feature that a shopper may configure to identify other shoppers within a certain physical proximity zone, such as within the same virtual store.

IV. *Herland* Does Not Remedy The *Gusler* Deficiencies

The Examiner states that *Gusler* does not disclose “wherein the web page that the user is accessing and each of the web pages accessed by the other users comprise any web page on the Internet,” but relies on *Herland* to remedy this deficiency. Applicants respectfully traverse the Examiner’s combination of these references.

Neither reference teaches calculating a virtual distance between two different web pages. *Herland* requires that the web pages be the same and *Gusler*, as explained above, makes no reference to measuring distances between web pages. In other words, *Herland* does not remedy *Gusler*’s deficiencies. In addition, combining the alleged “communicating over the network (the internet or corporate intranet)” disclosure of *Herland* with the alleged *Gusler* teachings would not have rendered Applicants’ claimed methods and systems obvious to a skilled artisan at the time of Applicants’ claimed invention. The technology disclosed in *Gusler* is limited to a closed system, *e.g.*, a software application, which identifies where users are within the closed system, akin to a video game. The technology disclosed in *Herland* is limited to identifying users positioned at the same web page. Neither reference teaches, nor suggests, a system for “calculating a virtual distance between a web page that a user is accessing . . . and web pages accessed by other users . . . wherein the web page that the user is accessing and each of the web pages accessed by the other users comprise any web page on the Internet.” The Examiner appears to suggest that deriving and enabling such functionality would have been within the knowledge of a skilled artisan at the time of Applicants’ invention, but points to nothing to support this assertion. Without the cited references providing some apparent reason for doing so, combining the former methodologies to arrive at the latter (Applicants’ invention) calls for more than the “inferences or creative steps” contemplated by the Supreme Court in *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). In fact, only by improperly relying upon the disclosures contained in Applicants’ claims and specification can the Examiner argue that it would have been obvious to combine *Gusler* and *Herland* to arrive at Applicants’ recited invention.

V. 35 U.S.C. § 103—Gusler—Herland In View of Other References

Claims 2, 5 and 12–17 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Gusler—Herland in view of various combinations with U.S. Patent No. 7,035,926 to Cohen *et al.*, U.S. Pat. Appl. Publ. No. 2005/0141688 to Wengrovitz, U.S. Pat. Appl. Publ. No. 2001/0027474 to Nachman *et al.* and U.S. Pat. Appl. Publ. No. 2001/0016825 to Pugliese III *et al.* Because claims 2, 5 and 12–17 each depend from amended independent claim 1, they incorporate the features recited in claim 1. Therefore, claims 2, 5 and 12–17 are patentable for at least the reasons noted above with respect to claim 1.

For at least the reasons stated above, Applicants' respectfully submit that independent claims 1, 18, 19, 25, 28, 32 and 36–39, and claims 2–17, 20–24, 26, 27, 29–31 and 33–35 depending therefrom, are patentable over the cited references. Accordingly, Applicants respectfully request withdrawal of these rejections.

CONCLUSION

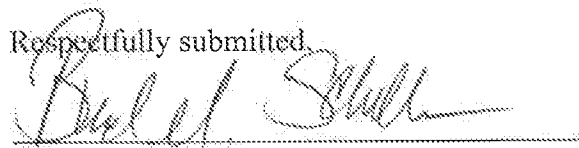
Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of the pending claim and allowance of this Application. In the event the Examiner has further questions or concerns after reviewing this submission, Applicants urge the Examiner to contact Applicants' representatives at the below listed phone number to help expedite the prosecution of this Application.

Applicants respectfully note that failure of Applicants to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. Nothing in this paper, nor any prior response or communication filed by Applicants, should be construed as an intent to concede any issue with regard to any claim, except as specifically stated. Applicants also reserve the right to pursue claims for the subject disclosure in either or both of the present and subsequent applications claiming benefit of the subject application. Such claims may include claims similar to the claims currently pending in the subject application, including broader aspects of such embodiments currently claimed, as well as other aspects and embodiments and inventions. To that end, any current amendments made to the claims or the presentation of new claims are relative only to particular embodiments among the numerous embodiments and inventions disclosed and/or taught by the present disclosure.

The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account 50-0311, Reference No. 27683-011. The Director is further authorized to charge any required fee(s) under 37 C.F.R. §§ 1.19, 1.20, and 1.21 to the abovementioned Deposit Account.

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Respectfully submitted,



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